



FISHING COMMUNITIES COALITION

September 5, 2023

Dr. Wendy Morrison
National Marine Fisheries Service
1315 East-West Highway, Room 13436
Silver Spring, MD 20910

Dear Dr. Morrison,

The Fishing Communities Coalition (“FCC”) appreciates the opportunity to provide comments on the proposed revisions to the guidelines for National Standards (“NS’s”) 4, 8, and 9 (“the guidelines”). The FCC is a diverse group of community-based, small boat commercial fishing organizations representing more than 1,000 independent fishermen and business owners from across the country who are all committed to promoting sustainable, equitable, science-based fishery management. The FCC develops national solutions for community-based fisheries in the US and provides a unified, national voice for our member organizations. Those voices are united in support for the guideline updates included in these comments.

The FCC applauds the efforts of the National Marine Fisheries Service (“NMFS”) to update the guidelines, an endeavor that is long overdue. We also stand in solidarity with our Indigenous colleagues, who deserve enhanced just and equitable treatment as a result of this process. The guidelines for National Standards 4, 8, and 9 contain key checks and balances that require Regional Fishery Management Councils (“Councils”) to weave equitability into fishery allocations, provide for the sustained participation of fishing communities against the backdrop of community disaggregation and climate change impacts, and avoid or minimize harmful bycatch impacts. NMFS finds itself in a unique moment in its history, with numerous directives to incorporate Equity and Environmental Justice (“EEJ”) into policymaking that guides agency regulatory actions. Indeed, NMFS’s own EEJ Strategy finalized earlier this year calls for the integration of EEJ principles into “everything [NMFS does]”, including “all of [NMFS] ongoing and future activities”. As far as NMFS regulatory activities are concerned, FCC believes that these National Standard guideline updates are the ideal place to begin. This is a generational opportunity to right historical wrongs and to ensure that the next generation of community-based fishermen has as much opportunity in this industry as their forebears.

As you know, the guidelines have not been significantly updated since they were first promulgated in the 1990s. Since that time, environmental impacts to the nation’s commercial

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fisheries (many unquestionably driven by climate change) have multiplied in frequency and severity, as evidenced by the nearly sixfold increase in NOAA fishery disaster determinations in the past five years as compared to the last five years of the 1990s.¹ As fisheries have become fully subscribed, some management measures developed to stabilize and ensure community access have instead caused increased sale or allocation of access away from some fishing communities. Bycatch impacts to directed fisheries have increased, causing the closure of subsistence and small-scale fisheries to an unprecedented degree, including the near-total closure of Chinook salmon subsistence fisheries in Western Alaska² and severe constraints in others.

NMFS asks many helpful questions and raises several meaningful issues in its Advance Notice of Proposed Rulemaking (“ANPR”) dated May 15, 2023. However, the opportunity to update the guidelines should be more expansive than the concepts presented in the ANPR. In some instances, we disagree with NMFS assertions in the ANPR and question the direction of its inquiries.

The FCC’s role as the national voice for small-scale fishing communities calls for the development of these comments in order to strengthen the opportunity for participation of our communities and members, fully aligned with the explicit goals of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Our comments address these questions and issues in two ways: first, by describing the enclosed redline changes to the guidelines themselves accompanied by relevant justification and explanation; and second, by responding to the queries contained in the ANPR. We paid particular attention to developing redline language that is consistent with contextual legal and regulatory requirements and processes, and refrained from “goalposting”. We believe that NMFS is capable of implementing each of our suggestions in their entirety, and that the Councils would be able to derive clear direction from them and adapt their management processes accordingly. However, we have indicated the suggested changes that are our highest priority.

I. General provisions

The General provisions for the National Standards at 50 CFR §600.305 present several opportunities to support fishing communities, enhance EEJ, and to incorporate climate change into the fishery management process. The section defines several key terms and styles of language usage, and it contains language that clarifies the relationship between several of the National Standards and NS1.

The FCC recommends that NMFS include a definition of the term “equity” in this section. Further, this definition should clarify how a Council should determine whether its decisions and objectives are “equitable”. We have suggested language that derives heavily from the NMFS EEJ Strategy both in defining equity and clarifying whether a Council is operating equitably.

We suggest that the subsection dealing with the relationship of NS1 to other National Standards be updated in several key ways:

¹ <https://www.fisheries.noaa.gov/national/funding-and-financial-services/fishery-disaster-determinations>

² <https://www.doi.gov/sites/doi.gov/files/fisheries-updates-no-6-june-26-july-2-2023.pdf>

First, the relationship between NS1 and NS4 should be clarified with respect to shifting stocks. Councils - either individually or collaboratively - should be directed to evaluate allocations of stocks that are shifting due to climate change in terms of optimizing yield. A framework that recognizes the issue as one of optimization, in the context of allocation of fishery resource access between Councils is an appropriate and adaptive approach for this complex issue. Absent changes in statute, this approach to the guidelines is the most viable approach to address shifting stocks in a manner that promotes adaptability and recognizes climate change impacts to fisheries.

Second, the relationship between NS1 and NS8 should be clarified such that, when multiple options to achieve OY are available, Councils should be directed to select the option that minimizes adverse impacts on fishing communities. This language is fully consistent with statute and recapitulates existing language in the NS8 guidelines at 50 CFR §600.345(b)(1), but elevating the requirement to select options that minimize adverse community impacts in the context of OY is a necessary step to strengthen the provision and clarify the importance of this requirement to Councils. **This is a High Priority for the FCC.**

Third, the FCC recommends that the Councils be directed to achieve OY by minimizing bycatch of non-target species and non-target stocks that are themselves target species or target stocks in other fisheries or under other FMPs. Updating this language is necessary because Councils have in the past dismissed bycatch impacts to directed fisheries as non-optimized or have otherwise failed to adequately consider bycatch impacts to non-target fisheries or fisheries managed under other FMPs in their calculations of OY. This is a common theme throughout our redline comments; here as elsewhere, **this is a High Priority for the FCC.**

II. National Standard 4

Updates to the NS4 guidelines at 50 CFR §600.325 should address significant EEJ-related challenges facing NMFS and the Councils while clarifying the ways that management approaches should integrate climate change impacts to fisheries. We have suggested several changes that incorporate these elements into the guidelines. In addition, as with the relationship between NS1 and the other National Standards, we recognize the subsidiarity of NS8 and NS9 to NS4 in practice and in the courts. For example, a Council's NS8 analysis should not exist in a vacuum; rather, it should feed directly into the way Councils weigh allocation alternatives and determine whether those alternatives are fair and equitable.

NMFS has a key opportunity to update the NS4 guidelines to clarify the ways that Councils should allocate access to resources in light of their responsibilities to adhere to NS8 and NS9. This is fully consistent with existing NS8 guideline language at 50 CFR §600.345(b)(1), but the omission of a requirement to select management alternatives that minimize impacts to fishing communities, "all other things being equal", within the NS4 guidelines has enabled Councils to neglect this requirement. It has also allowed the courts to invalidate FMP amendments that weigh community impacts in making allocation decisions in at least one instance, to the detriment of fishing communities and the environment. The language we suggest in this section is designed to clarify these relationships in a manner that is simultaneously consistent with each of the three National Standards the agency is focusing on in this regulatory action.

In describing the relationships between NS4 analyses and factors used to make allocations, NS8 requirements to provide for the sustained participation of fishing communities, and NS9 requirements to first avoid and then minimize bycatch, we first suggest that NS8 and NS9 requirements be included in the list of factors that can shape the structure of fishing privileges in paragraph (c) and the list of factors that must be included in making allocations in paragraph (c)(3). We then suggest language that clarifies how a Council should estimate hardships placed on groups resulting from its allocation decisions in terms of NS8 and NS9 requirements as well as climate change impacts, and we suggest language that expressly prohibits Councils from allowing a fishery allocation to result in the excessive bycatch of another fishery's target stock as a non-target stock under that allocation.

The FCC asserts that it is appropriate and necessary to elevate the requirements of NS8 and NS9 in this manner in order to ensure that Councils' allocation decisions duly incorporate EEJ principles and appropriately consider fishing community and bycatch impacts of their allocation decisions. **The suggested changes to NS4 guidelines described above represent the Highest Priority for the FCC.**

We further suggest NS4 guideline language that clarifies how NS8 and NS9 provisions should be recognized in Councils' promotion of conservation. The examples of conservation currently listed at paragraph (c)(3)(ii) are examples of management measures, not conservation actions. However, minimizing bycatch impacts to the marine environment and fishing communities are examples of conservation actions, and should be included here. We also suggest language directing Councils to evaluate whether their allocation decisions are resulting in excessive shares by using their NS8 analysis, and to incorporate ongoing and anticipated impacts of climate change into allocation decisions.

III. National Standard 8

FCC strongly recommends that the NS8 guidelines at 50 CFR §600.345 be updated to clarify how Councils' alternatives should be developed and evaluated in order to minimize adverse economic impacts on fishing communities. The guidelines can achieve this in several ways.

First, the fourth sentence in paragraph (b)(1) should be removed. This sentence currently enables Councils to establish the "practicability" of any failure to minimize adverse economic impacts to fishing communities through the simple act of "discuss[ing]" those impacts. NS8 requires that there must be a much higher bar for practicability, and the guidelines' requirements for a thorough NS8 analysis negate any lost opportunities if Councils are no longer able to "discuss" their way out of minimizing economic impacts to fishing communities. Rather, because the requirement to minimize (to the extent practicable) economic impacts to fishing communities implies that some level of economic impact to those communities is excessive, guidelines for determining whether they are excessive should be established. We suggest language to this effect in a new paragraph (b)(2). Additionally, we suggest a technical correction in paragraph (b)(1).

Second, NMFS asks whether the language at (existing) paragraph (b)(2) should be removed; FCC believes that it should. This language originates in discussions surrounding the 1996 MSA reauthorization, apparently based on unfounded concerns about friction between communities

arising from allocation decisions. These 25-year-old concerns have not materialized. Conversely, and ironically, this language has prevented, in part, at least one Council from advancing a fishery management approach designed to support underserved communities.³ The paragraph's status as outdated and, now, inhibitive warrants its deletion.

Third, FCC recommends that the significant challenges surrounding the provision of fishery access to new entrants, members of previously excluded groups, and members of underserved communities be meaningfully addressed through an expansion of the definition of "sustained participation" at paragraph (b)(4). We recommend the adoption of an augmented definition of the term that specifies when a community's participation can be considered to be sustained: when fishery access is fair and equitable, when new generations of fishermen are able to meaningfully and safely participate in fisheries on which they depend, and when a Council's decisions do not excessively adversely impact fishing community members' economic, cultural, and social wellbeing. **This is a High Priority for the FCC.**

Fourth, we suggest language to enhance Councils' NS8 analyses in several key ways. Councils should be required to analyze how FMP actions and alternatives impact communities participating in other fisheries (managed under other FMPs, by States, or under international agreements) through bycatch, etc. NS8 analyses should also evaluate and consider the impacts of climate change and other environmental hazards to fishing communities.

IV. National Standard 9

It is of critical importance to the FCC that NMFS update the National Standard guidelines in order to meaningfully reduce bycatch, particularly bycatch impacts to directed fisheries via the capture of non-target stocks. While we believe that the way to achieve this outcome is through strong requirements for avoiding and minimizing bycatch under NS4, there is also a need to strengthen NS9 in meaningful ways in light of continued excessive bycatch impacts to stocks, communities, and the environment.

First, the guidelines' examples of the ways that bycatch can impede efforts to "protect marine ecosystems and achieve sustainable fisheries and the full benefits they can provide to the Nation" should be updated to reflect a modern understanding of bycatch impacts across fisheries and ecosystems. We suggest that NMFS augment the second example in paragraph (b) to reflect the potential for bycatch to impact other fisheries and fishing communities, and we suggest a third example describing bycatch impacts to ecosystem component species, habitat-forming organisms, and structures/substrata and the resulting impacts to fishery productivity.

Second, we find that the recreational fishery catch-and-release exclusion to the definition of bycatch provides a significant loophole to full bycatch accountability in recreational fisheries by failing to fully and adequately account for discard mortality. This exclusion should be updated such that only fish caught under a catch-and-release program that are reasonably expected to survive, based on the best available scientific information regarding levels of discard mortality, should be excluded from the term bycatch and therefore from levels of bycatch in such fisheries adopted by Councils.

³ <https://docs.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2016cv02495/183497/51>

V. Issues and questions raised in the ANPR

1. Tackling the Climate Crisis

NMFS states that it is explicitly considering whether NS4 guideline updates could result in more balanced decisions across user groups when creating or updating allocations. NMFS asks specifically on shifting stocks.

The NS4 guideline language described above and included in our redlines could achieve greater balance in Council decision making and allocation, specifically with regard to climate change impacts, consideration of fishing community impacts, and bycatch. Shifting stocks are an important and overdue consideration. However, shifting stock distribution must not become a proxy for reallocation of access among user groups without due consideration, and safeguards should be established to ensure that small-scale commercial participants can access stocks should management regimes shift between Councils. The issue of shifting stocks between Councils could be most productively addressed by linking OY considerations under NS1 to allocation discussions between Councils under NS4 in the guidelines. Further consideration of this issue is likely a matter for Congress to decide.

The ANPR requests input on the types of documents, analyses, and alternative approaches that should be considered when making allocation decisions. As per the comments above, the FCC's highest priority for this rulemaking opportunity is the incorporation of community and bycatch considerations into Councils' allocation decisions, specifically regarding the avoidance/minimization of impacts of non-target species bycatch to fisheries that target those species and the communities that depend on them. We suggest numerous ways that NS4 can be updated to better achieve balance across users.

The ANPR requests input on options to update NS8 guidelines to account for climate change impacts to fishing communities and achieve resilience for these communities. The FCC has suggested language that calls for incorporating climate change impacts to fishing communities into Councils' NS8 analyses. We note also that the wording of NMFS' query places (appropriately) emphasis on supporting communities that are "dependent" on fishery resources.

The ANPR requests input on how NS9 guidelines could better account for and adapt to climate change impacts to bycatch. We have suggested NS9 guideline language for NMFS to consider that describes examples of the ways bycatch can impact fishing communities and ecosystem productivity.

2. Equity and Environmental Justice

NMFS states that it is committed to advancing equity and environmental justice. It then asserts that it would be difficult to further clarify what these terms mean. The FCC disagrees. The term "equity" is defined appropriately in NMFS' EEJ Strategy, and further clarification of the ways that Council actions and objectives can be determined to be equitable is appropriate for these guidelines. FCC suggests that such a definition and guidance be adopted, and has included proposed language.

The ANPR requests input on approaches to improve consideration of underserved communities, previously excluded entrants, and new entrants in allocation decisions. FCC has long supported strategies to provide for new fishery entrants and including new entrants when resource sustainability and economics allow, and we are a national leader on this issue. FCC also supports efforts generally to provide access for marginalized groups and Indigenous participants through the regulatory systems we have in place and by minimizing impacts to subsistence users. These communities of previously excluded entrants should be treated fairly and equitably under NS8 and throughout the guidelines. We have suggested NS4 guideline language that achieves enhanced consideration of these communities in numerous ways. Additionally, we support the expansion of the definition of “sustained participation” in NS8 to specify when a community’s participation can be considered to be sustained and how a Council can achieve this objective in meaningful ways (see above).

The ANPR requests input on the types of documentation and approaches that should be considered to ensure that allocation decisions are fair and equitable. We have suggested NS4 guideline language that advances several approaches to enhance fairness and equitability, chiefly by linking NS8 and NS9 considerations to allocation decisions (see above). **This is FCC’s highest priority for the National Standard guideline updates.**

The ANPR requests input on the removal of the language at 50 USC §600.345(b)(2). The FCC supports the removal of this language.

The ANPR states that NMFS is considering revising the definition of a fishing community to remove the requirement for members to reside in a fishing community, and is further considering a shift in focus from “dependence” to “engagement”. The FCC vehemently opposes these changes. Fishing communities are and must continue to be treated as place-based, regardless of where members specifically reside, and eliminating this central consideration of the sense of place would allow Councils to ascribe other attributes to fishing communities that would subvert the meaning and intention of NS8. Councils are already enabled to focus on home port rather than specific town of residence when considering fishing community issues and impacts, and we are unaware of any challenges associated with ascribing a place to fishing communities.

If NMFS’ intention in considering this change is to enable more equitable consideration of underserved communities that are not currently considered fishing communities, we suggest that other more direct approaches to enhancing equity be used instead. We applaud NMFS for understanding that diversification is important for community resilience. However, changes along the lines suggested in the ANPR will invariably lead to lost access for small-scale community-based commercial fisheries in favor of corporate fleets and a recreational sector with substantially greater management uncertainty. This is not likely to lead to the equitable allocation outcomes that NMFS may be contemplating here, and we strongly advise the agency to avoid making any changes along the lines of what it proposes.

The ANPR requests input on how to appropriately balance providing for the sustained participation of fishing communities and supporting new entrants, underserved communities, communities of previously excluded entrants, etc. This may be a false dichotomy, because these sets of community considerations shouldn’t be viewed or treated as being in opposition if Councils are holistically evaluating and adjudicating community impacts. We note that we

understand the term *previously excluded entrants* to mean groups or communities of individuals who have been systematically excluded from participation, as opposed to individual fishermen who may have been excluded due to management measures like control dates, etc. The FCC strongly supports incorporating consideration of underserved communities, new entrants, etc. directly into the guidelines' definition of sustained participation, and we have suggested language to this effect.

The ANPR requests comments on ways to better balance the needs of bycatch and target fisheries. As stated above, improved consideration of this issue throughout the guidelines, particularly language in the NS4 guidelines that addresses bycatch of species targeted in other fisheries, is one of FCC's highest priorities for National Standard guideline updates. We have suggested numerous ways that the guidelines can be updated along these lines.

NMFS asks whether it should add provisions to the guidelines to clarify the NS9 practicability standard with respect to addressing bycatch on an ecosystem level, adopting alternative performance-based standards, and further documenting bycatch avoidance. In general, the FCC supports the addition of language to the NS9 guidelines that could further clarify whether bycatch avoidance and minimization is practicable. FCC supports evaluating non-harvested bycatch impacts at both the stock and ecosystem levels (e.g. impacts on ecosystem component species, physical and biological habitat, life history stages, non-retained catch, etc.) Further, bycatch impacts should be weighed in terms of future losses to relevant directed fisheries when undersized bycatch occurs.

However, FCC opposes any adoption of alternative bycatch standards that fail to achieve accountability and management/scientific uncertainty parity with other user groups (i.e. recreational discard mortality or retention standards vs. commercial; tender standards vs. other gear types). NMFS should focus on strengthening bycatch accountability standards rather than enabling the adoption of performance-based standards without any clear bycatch reduction benefit. Documenting bycatch avoidance is valuable only if accompanied by stronger requirements to minimize the effects of bycatch to other fisheries and ecosystem productivity.

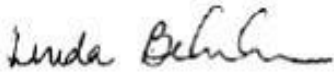
The ANPR requests input on the reduction of waste associated with bycatch by innovating approaches to avoid bycatch, decrease bycatch mortality, or increase use of bycatch. The first two goals are laudable, although Councils likely have the tools available to achieve them without requiring NS9 guideline updates. However, FCC opposes any expanded bycatch allocations for directed fisheries stocks, and we oppose NS9 guideline changes that would provide any opportunity for retention or sale of bycatch, which invariably incentivizes harvest and depletes/negatively impacts directed fisheries. NMFS should not provide any opportunities for the further allocation of bycatch quota through purchase from directed fisheries, nor should the agency in any way provide for any type of compensation, including sale, of bycatch.

VI. Conclusion

The FCC deeply appreciates the opportunity to provide these comments. We are committed to supporting NMFS as you continue to pursue more equitable and just approaches to fishery management by updating these guidelines.

Should you have any questions about our comments or suggested language, please do not hesitate to reach out to FCC coordinator Noah Oppenheim at noah@homarus.co.

Sincerely,



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ENCLOSURE

FCC Proposed changes to the National Standard guidelines

Key

Current language

Suggested addition

~~Suggested deletion~~

§ 600.305 General.

(a) ***Purpose.***

(1) This subpart establishes guidelines, based on the national standards, to assist in the development and review of FMPs, amendments, and regulations prepared by the Councils and the Secretary.

(2) In developing FMPs, the Councils have the initial authority to ascertain factual circumstances, to establish management objectives, and to propose management measures that will achieve the objectives. The Secretary will determine whether the proposed management objectives and measures are consistent with the national standards, other provisions of the Magnuson-Stevens Act (MSA), and other applicable law. The Secretary has an obligation under section 301(b) of the MSA to inform the Councils of the Secretary's interpretation of the national standards so that they will have an understanding of the basis on which FMPs will be reviewed.

(3) The national standards are statutory principles that must be followed in any FMP. The guidelines summarize Secretarial interpretations that have been, and will be, applied under these principles. The guidelines are intended as aids to decision-making; FMPs formulated according to the guidelines will have a better chance for expeditious Secretarial review, approval, and implementation. FMPs that are not formulated according to the guidelines may not be approved by the Secretary if the FMP or FMP amendment is inconsistent with the MSA or other applicable law ([16 U.S.C. 1854\(a\)\(3\)](#)).

(b) ***Fishery management objectives.***

(1) Each FMP, whether prepared by a Council or by the Secretary, should identify what the FMP is designed to accomplish (*i.e.*, the management objectives to be attained in regulating the fishery under consideration). In establishing objectives, Councils balance biological constraints with human needs, reconcile present and future costs and benefits, and integrate the diversity of public and private interests. If objectives are in conflict, priorities should be established among them **that are consistent with these guidelines and that achieve equitable outcomes.**

(2) To reflect the changing needs of the fishery over time, Councils should reassess the FMP's management objectives on a regular basis.

(3) How objectives are defined is important to the management process. Objectives should address the problems of a particular fishery. The objectives should be clearly stated, practicably attainable, framed in terms of definable events and measurable benefits, and based upon a comprehensive rather than a fragmentary approach to the problems addressed. An FMP should make a clear distinction between objectives and the management measures chosen to achieve them. The objectives of each FMP provide the context within which the Secretary will judge the consistency of an FMP's conservation and management measures with the national standards.

(c) Stocks that require conservation and management.

(1) Magnuson-Stevens Act section 302(h)(1) requires a Council to prepare an FMP for each fishery under its authority that requires (or in other words, is in need of) conservation and management. [16 U.S.C. 1852\(h\)\(1\)](#). Not every fishery requires Federal management. Any stocks that are predominately caught in Federal waters and are overfished or subject to overfishing, or likely to become overfished or subject to overfishing, are considered to require conservation and management. Beyond such stocks, Councils may determine that additional stocks require “conservation and management.” (See Magnuson-Stevens Act definition at [16 U.S.C. 1802\(5\)](#)). Based on this definition of conservation and management, and other relevant provisions of the Magnuson-Stevens Act, a Council should consider the following non-exhaustive list of factors when deciding whether additional stocks require conservation and management:

- (i) The stock is an important component of the marine environment.
- (ii) The stock is caught by the fishery.
- (iii) Whether an FMP can improve or maintain the condition of the stock.
- (iv) The stock is a target of a fishery.
- (v) The stock is important to commercial, recreational, **Tribal**, or subsistence users.
- (vi) The fishery is important to the Nation or to the regional economy.
- (vii) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.
- (viii) The economic condition of a fishery and whether an FMP can produce more efficient utilization.

(ix) The needs of a developing fishery, and whether an FMP can foster orderly growth.

(x) The extent to which the fishery is already adequately managed by states, by state/Federal programs, or by Federal regulations pursuant to other FMPs or international commissions, or by industry self-regulation, consistent with the requirements of the Magnuson-Stevens Act and other applicable law.

(2) In evaluating factors in [paragraphs \(c\)\(1\)\(i\)](#) through [\(x\)](#) of this section, a Council should consider the specific circumstances of a fishery, based on the best scientific information available, to determine whether there are biological, economic, social and/or operational concerns that can and should be addressed by Federal management.

(3) When considering adding a stock to an FMP, no single factor is dispositive or required. One or more of the above factors, and any additional considerations that may be relevant to the particular stock, may provide the basis for determining that a stock requires conservation and management. Based on the factor in [paragraph \(c\)\(1\)\(iii\)](#) of this section, if the amount and/or type of catch that occurs in Federal waters is a significant contributing factor to the stock's status, such information would weigh heavily in favor of adding a stock to an FMP. However, Councils should consider the factor in [paragraph \(c\)\(1\)\(x\)](#) of this section before deciding to include a stock in an FMP. In many circumstances, adequate management of a fishery by states, state/Federal programs, or another Federal FMP would weigh heavily against a Federal FMP action. *See, e.g.,* [16 U.S.C. 1851\(a\)\(7\)](#) and [1856\(a\)\(3\)](#).

(4) When considering removing a stock from, or continuing to include a stock in, an FMP, Councils should prepare a thorough analysis of factors in [paragraphs \(c\)\(1\)\(i\)](#) through [\(x\)](#) of this section, and any additional considerations that may be relevant to the particular stock. As mentioned in [paragraph \(c\)\(3\)](#) of this section, if the amount and/or type of catch that occurs in Federal waters is a significant contributing factor to the stock's status, such information would weigh heavily in favor of continuing to include a stock in an FMP. Councils should consider weighting the factors as follows. Factors in [paragraphs \(c\)\(1\)\(i\)](#) through [\(iii\)](#) of this section should be considered first, as they address maintaining a fishery resource and the marine environment. *See* [16 U.S.C. 1802\(5\)\(A\)](#). These factors weigh in favor of continuing to include a stock in an FMP. Councils should next consider factors in [paragraphs \(c\)\(1\)\(iv\)](#) through [\(ix\)](#) of this section, which set forth key economic, social, and other reasons contained within the MSA for an FMP action. *See* [16 U.S.C. 1802\(5\)\(B\)](#). Finally, a Council should consider the factor in [paragraph \(c\)\(1\)\(x\)](#) of this section before deciding to remove a stock from, or continue to include a stock in, an FMP. In many circumstances, adequate management of a fishery by states, state/Federal programs, or another Federal FMP would weigh in favor of removing a stock from an FMP. *See e.g.,* [16 U.S.C. 1851\(a\)\(7\)](#) and [1856\(a\)\(3\)](#).

(5) Councils may choose to identify stocks within their FMPs as ecosystem component (EC) species (*see* § [600.305\(d\)\(13\)](#) and [600.310\(d\)\(1\)](#)) if a Council determines that the stocks do not require conservation and management based on the considerations and factors in [paragraph \(c\)\(1\)](#) of this section. EC species may be identified at the species or stock level, and may be grouped into complexes. Consistent with National Standard 9, MSA section 303(b)(12), and other applicable MSA sections, management measures can be adopted in order to, for example, collect data on the EC species, minimize bycatch or bycatch mortality of EC species, protect the associated role of EC species in the ecosystem, and/or to address other ecosystem issues.

(6) A stock or stock complex may be identified in more than one FMP. In this situation, the relevant Councils should choose which FMP will be the primary FMP in which reference points for the stock or stock complex will be established. In other FMPs, the stock or stock complex may be identified as “other managed stocks” and management measures that are consistent with the objectives of the primary FMP can be established.

(7) Councils should periodically review their FMPs and the best scientific information available and determine if the stocks are appropriately identified. As appropriate, stocks should be reclassified within an FMP, added to or removed from an existing FMP, or added to a new FMP, through an FMP amendment that documents the rationale for the decision.

(d) ***Word usage within the National Standard Guidelines.*** The word usage refers to all regulations in this subpart.

(1) ***Must*** is used, instead of “shall”, to denote an obligation to act; it is used primarily when referring to requirements of the Magnuson-Stevens Act, the logical extension thereof, or of other applicable law.

(2) ***Shall*** is used only when quoting statutory language directly, to avoid confusion with the future tense.

(3) ***Should*** is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Magnuson-Stevens Act, and is a factor reviewers will look for in evaluating a statement of organization, practices, and procedures (SOPP) or an FMP.

(4) ***May*** is used in a permissive sense.

(5) ***Will*** is used descriptively, as distinguished from denoting an obligation to act or the future tense.

(6) ***Could*** is used when giving examples, in a hypothetical, permissive sense.

(7) **Can** is used to mean “is able to,” as distinguished from “may.”

(8) **Examples** are given by way of illustration and further explanation. They are not inclusive lists; they do not limit options.

(9) **Analysis**, as a paragraph heading, signals more detailed guidance as to the type of discussion and examination an FMP should contain to demonstrate compliance with the standard in question.

(10) **Council** includes the Secretary, as applicable, when preparing FMPs or amendments under section 304(c) and (g) of the Magnuson-Stevens Act.

(11) **Target stocks** are stocks or stock complexes that fishers seek to catch for sale or personal use, including such fish that are discarded for economic or regulatory reasons as defined under Magnuson-Stevens Act section 3(9) and 3(38).

(12) **Non-target species** and *non-target stocks* are fish caught incidentally during the pursuit of target stocks in a fishery. Non-target stocks may require conservation and management and, if so, must be included in a FMP and be identified at the stock or stock complex level. If non-target species are not in need of conservation and management, they may be identified in an FMP as ecosystem component species.

(13) **Ecosystem Component Species** (see [§§ 600.305\(c\)\(5\)](#) and [600.310\(d\)\(1\)](#)) are stocks that a Council or the Secretary has determined do not require conservation and management, but desire to list in an FMP in order to achieve ecosystem management objectives.

(14) **Equity** is the consistent and systematic fair, just and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment. A Council’s actions and objectives are equitable if they provide for the fair treatment of and meaningful opportunities for involvement by all people and members of all fishing communities (regardless of race, color, gender, sexual orientation, national origin, tribal affiliation, religion, disability, or income), consideration of the effects of environmental hazards, including climate change, on people and fishing communities, and the fair distribution of fishery resources and the burdens of their conservation.

(e) **Relationship of National Standard 1 to other national standards** —*General*. National Standard 1 addresses preventing overfishing and achieving optimum yield. See [16 U.S.C. 1851\(a\)\(1\)](#) and [50 CFR 600.310](#). National Standards 2 through 10 provide further requirements for conservation and management measures in FMPs. See [16 U.S.C. 1851\(a\)\(2\)](#) through [\(10\)](#) and [50 CFR 600.315](#) through [600.355](#). Below is a description of how some of the other National Standards intersect with National Standard 1.

(1) **National Standard 2** (see [§ 600.315](#)). Management measures and reference points to implement NS1 must be based on the best scientific information available. When data are insufficient to estimate reference points directly, Councils should develop reasonable proxies to the extent possible (also see [§ 600.310\(e\)\(1\)\(v\)\(B\)](#)). In cases where scientific data are severely limited, effort should also be directed to identifying and gathering the needed data. SSCs should advise their Councils regarding the best scientific information available for fishery management decisions.

(2) **National Standard 3** (see [§ 600.320](#)). Reference points should generally be specified in terms of the level of stock aggregation for which the best scientific information is available (also see [§ 600.310\(e\)\(1\)\(ii\)](#) and [\(iii\)](#)).

(3) **National Standard 4** (see [§ 600.325](#)). Councils should consider the effects of climate change on stock distributions in calculating OY and allocating fishing privileges. In the case of stocks whose distributions are shifting or reasonably expected to shift between areas managed by two or more Councils based on the best available scientific information, the appropriate Councils should coordinate between each other in order to optimize allocations.

(4) **National Standard 6** (see [§ 600.335](#)). Councils must build into the reference points and control rules appropriate consideration of risk, taking into account uncertainties in estimating harvest, stock conditions, life history parameters, or the effects of environmental factors.

(5) **National Standard 8** (see [§ 600.345](#)). National Standard 8 addresses economic and social considerations, including directing Councils to provide for the sustained participation of fishing communities, and minimizing to the extent practicable adverse economic impacts on fishing communities within the context of preventing overfishing and rebuilding overfished stocks as required under National Standard 1 and other MSA provisions. Calculation of OY as reduced from maximum sustainable yield (MSY) also includes consideration of economic and social factors, but the combination of management measures chosen to achieve the OY must principally be designed to prevent overfishing and rebuild overfished stocks. If multiple management options that a Council determines can achieve OY are available, the Council should select the option that minimizes adverse social and economic impacts on fishing communities.

(6) **National Standard 9** (see [§ 600.350](#)). Evaluation of stock status with respect to reference points must take into account mortality and other impacts caused by bycatch. In addition, the estimation of catch should include the mortality of fish that are discarded. Councils should select management options that achieve OY by minimizing bycatch of non-target species and non-target stocks that are themselves target species or target stocks in other fisheries or under other FMPs.

§ 600.325 National Standard 4—Allocations.

(a) **Standard 4.** Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be:

- (1) Fair and equitable to all such fishermen.
- (2) Reasonably calculated to promote conservation.
- (3) Carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(b) **Discrimination among residents of different states.** An FMP may not differentiate among U.S. citizens, nationals, resident aliens, or corporations on the basis of their state of residence. An FMP may not incorporate or rely on a state statute or regulation that discriminates against residents of another state. Conservation and management measures that have different effects on persons in various geographic locations are permissible if they satisfy the other guidelines under Standard 4. Examples of these precepts are:

- (1) An FMP that restricted fishing in the EEZ to those holding a permit from state X would violate Standard 4 if state X issued permits only to its own citizens.
- (2) An FMP that closed a spawning ground might disadvantage fishermen living in the state closest to it, because they would have to travel farther to an open area, but the closure could be justified under Standard 4 as a conservation measure with no discriminatory intent.

(c) **Allocation of fishing privileges.** An FMP may contain management measures that allocate fishing privileges if such measures are necessary or helpful in furthering legitimate objectives or in achieving the OY, **providing for the sustained participation of fishing communities and minimizing economic impacts to such communities consistent with NS8, avoiding or minimizing bycatch consistent with NS9,** and if the measures conform with [paragraphs \(c\)\(3\)\(i\) through \(c\)\(3\)\(iii\)](#) of this section.

(1) **Definition.** An “allocation” or “assignment” of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of Standard 4. Adoption of an FMP that merely perpetuates existing fishing practices may result in an allocation, if those practices directly distribute the opportunity to participate in the fishery. Allocations of fishing privileges include, for example, per-vessel catch limits, quotas by vessel class and gear type, different quotas or fishing seasons for recreational and commercial fishermen, assignment of

ocean areas to different gear users, and limitation of permits to a certain number of vessels or fishermen.

(2) ***Analysis of allocations.*** Each FMP should contain a description and analysis of the allocations existing in the fishery and of those made in the FMP. The effects of eliminating an existing allocation system should be examined. Allocation schemes considered, but rejected by the Council, should be included in the discussion. The analysis should relate the recommended allocations to the FMP's objectives and OY specification, and discuss the factors listed in [paragraph \(c\)\(3\)](#) of this section.

(3) ***Factors in making allocations.*** An allocation of fishing privileges must be fair and equitable, must be reasonably calculated to promote conservation, **must provide for the sustained participation of fishing communities and minimize adverse impacts to them consistent with NS8, must avoid or minimize bycatch consistent with NS9, and must avoid excessive shares, and they should consider the effects of climate change on the target stock(s) and the ecosystem.** These tests are explained in [paragraphs \(c\)\(3\)\(i\)](#) through [\(c\)\(3\)\(iii\)](#) of this section:

(i) ***Fairness and equity.***

(A) An allocation of fishing privileges should be rationally connected to the achievement of OY or with the furtherance of a legitimate FMP objective. Inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause. For instance, an FMP objective to preserve the economic status quo cannot be achieved by excluding a group of long-time participants in the fishery. On the other hand, there is a rational connection between an objective of harvesting shrimp at their maximum size and closing a nursery area to trawling.

(B) An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as “fair and equitable,” if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo. **In estimating or reviewing such benefits and hardships and in making such comparisons, the Council’s analysis should include an analysis of impacts to other fisheries, bycatch stocks and any fisheries targeting those stocks, the marine ecosystem, fishing communities, and ongoing and anticipated impacts of climate change to the fishery and dependent fishing communities.** Where relevant, judicial guidance and

government policy concerning the rights of treaty Indians and aboriginal Americans must be considered in determining whether an allocation is fair and equitable.

C) An allocation of fishing privileges under one FMP may not adversely impact the participants in another fishery managed under another FMP, by one or more States, or an international entity by allowing the excessive bycatch of the other fishery's target stock as a non-target stock in the first fishery. In determining or reviewing whether such an allocation is excessive, a Council should weigh the interests of a directed fishery, Tribal Nations, and communities that participate in directed fisheries favorably over the interests of a fishery that harvests another fishery's target stock as a non-target stock. A Council must coordinate its allocation schemes between FMPs in order to achieve fair and equitable outcomes under this subsection.

(ii) **Promotion of conservation.** Numerous methods of allocating fishing privileges are considered "conservation and management" measures under section 303 of the Magnuson-Stevens Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource in a manner that avoids or minimizes adverse impacts to the marine ecosystem, other fisheries, and fisheries-dependent communities. Or, it may promote conservation (in the sense of wise use) by optimizing the yield in terms of size, value, market mix, price, or economic or social benefit of the product. An allocation scheme should be developed that includes consideration of the bycatch impacts of fishing gear types and practices to ecosystems and fishing communities, and allocates fishing privileges in a manner that achieves the avoidance and minimization of such bycatch impacts. To the extent that rebuilding plans or other conservation and management measures that reduce the overall harvest in a fishery are necessary, any harvest restrictions or recovery benefits must be allocated fairly and equitably among the commercial, recreational, and charter fishing sectors of the fishery.

(iii) **Avoidance of excessive shares.** An allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges, and to avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist. In order to determine or review whether such conditions exist, a Council should consider whether alternative allocation schemes would result in fairer and more equitable outcomes or reduce adverse social and economic impacts on fishing communities. The Council's NS8 analysis should be used in making these determinations.

(iv) **Other factors.** In designing an allocation scheme, a Council should consider other factors relevant to the FMP's objectives. Examples are ongoing and anticipated impacts of climate change, economic and social consequences of the scheme, food production and security, consumer interest, dependence on the fishery by present participants and coastal communities, efficiency and associated bycatch and habitat impacts of various types of

gear used in the fishery, transferability of effort to and impact on other fisheries, opportunity for new participants to enter the fishery, and enhancement of opportunities for recreational fishing.

(d) ***Relationship of National Standard 4 to other national standards*** —*General*. A Council's allocation schemes must be consistent with and take into account its analyses under the other National Standards such that they:

(i) minimize adverse social and economic impacts to fishing communities;

(ii) first avoid, then minimize the allocation of target stocks in one fishery as bycatch in another;

(iii) allocate fishing privileges in a manner that reduces bycatch and bycatch mortality of stocks targeted in other fisheries or under other FMPs; and

(iv) can be reasonably expected to provide for the sustained participation of members of fishing communities, including new entrants, and members of historically underserved communities including Indigenous peoples, members of Indian Tribes, Alaska Natives, and rural residents.

§ 600.345 National Standard 8—Communities.

(a) **Standard 8.** Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that are based upon the best scientific information available in order to:

- (1) Provide for the sustained participation of such communities; and
- (2) To the extent practicable, minimize adverse economic impacts on such communities.

(b) **General.**

(1) This standard requires that an FMP take into account the importance of fishery resources to fishing communities. This consideration, however, is within the context of the conservation requirements of the Magnuson-Stevens Act. Deliberations regarding the importance of fishery resources to affected fishing communities, therefore, must not compromise the achievement of conservation requirements and goals of the FMP. ~~Where the preferred alternative negatively affects the sustained participation of fishing communities, the FMP should discuss the rationale for selecting this alternative over another with a lesser impact on fishing communities.~~ All other things being equal, where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of such communities and minimizes the adverse economic impacts on such communities ~~would~~ **should** be the preferred alternative.

~~(2) Councils should adopt preferred alternatives that do not negatively affect the sustained participation of fishing communities and should avoid alternatives that would result in excessive adverse economic impacts to fishing communities. In order to determine whether such impacts are excessive, a Council should consider whether alternatives are available that would result in more equitable outcomes, more adequately provide for the sustained participation of fishing communities, or reduce adverse social and economic impacts on fishing communities. The FMP should discuss the rationale for any adverse economic impacts to fishing communities.~~

~~(2) This standard does not constitute a basis for allocating resources to a specific fishing community nor for providing preferential treatment based on residence in a fishing community.~~

(3) The term “fishing community” means a community that is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew, and fish processors

that are based in such communities. A fishing community is a social or economic group whose members reside in a specific location and share a common dependency on commercial, recreational, or subsistence fishing or on directly related fisheries-dependent services and industries (for example, boatyards, ice suppliers, tackle shops).

(4) The term “sustained participation” means ~~continued~~ secure, financially and culturally meaningful access to the fishery within the constraints of the condition of the resource. A fishing community’s participation is sustained when fishery access is fair and equitable, when new generations of fishermen are able to meaningfully and safely participate in fisheries on which they depend, and when a Council’s decisions do not excessively adversely impact fishing community members’ economic, cultural, and social wellbeing. In providing for the sustained participation of fishing communities, a Council should consider the ways that new entrants and communities of previously excluded entrants can gain access to a fishery.

(c) *Analysis.*

(1) FMPs must examine the social and economic importance of fisheries to communities potentially affected by management measures, including indirect effects or impacts to other fisheries or communities. For example, severe reductions of harvests for conservation purposes may could decrease employment opportunities for fishermen and processing plant workers, thereby adversely affecting their families and communities. Similarly, a management measure that results in the allocation of fishery resources among competing sectors of a fishery may could benefit some communities at the expense of others, and a management measure adopted under one FMP could create hardship for communities that are dependent on resources impacted by that fishery or participants in another fishery managed under another FMP.

(2) An appropriate vehicle for the analyses under this standard is the fishery impact statement required by section 303(a)(9) of the Magnuson-Stevens Act. Qualitative and quantitative data may be used, including information provided by fishermen, dealers, processors, and fisheries organizations and associations. In cases where data are severely limited, effort should be directed to identifying and gathering needed data.

(3) To address the sustained participation of fishing communities that will be affected by management measures, the analysis should first identify affected fishing communities and then assess their differing levels of dependence on and engagement in the fishery being regulated or any impacted non-target fishery. The analysis should also specify how that assessment was made. The best available data on the history, extent, and type of participation of these fishing communities in the fishery or any impacted non-target fishery should be incorporated into the social and economic information presented in the FMP. The analysis does not have to contain an exhaustive listing of all communities that might fit the definition;

a judgment can be made as to which are primarily affected. The analysis should discuss each alternative's likely effect on the sustained participation of these fishing communities in the fishery or any impacted non-target fishery.

(4) The analysis should assess the likely positive and negative social and economic impacts of the alternative management measures, over both the short and the long term, on fishing communities. Any particular management measure may economically benefit some communities while adversely affecting others. Economic impacts should be considered both for individual communities and for the group of all affected communities identified in the FMP. Impacts of both consumptive and non-consumptive uses of fishery resources should be considered. Analyses should fully consider the financial and cultural impacts of a fishery's bycatch of non-target stocks to participants in, and fishing communities that depend on, fisheries that target those stocks, and fully account for any resulting constraints to fisheries managed under other FMPs.

(5) A discussion of social and economic impacts should identify those alternatives that would minimize adverse impacts on these fishing communities within the constraints of conservation and management goals of the FMP, other national standards, and other applicable law.

(6) The analysis should evaluate and consider the impacts of climate change and other environmental hazards to fishing communities. The analysis should also consider the intersection of management measures with ocean climate impacts to fishing communities and assess whether climate change is likely to increase or accelerate those impacts.

§ 600.350 National Standard 9—Bycatch.

(a) **Standard 9.** Conservation and management measures shall, to the extent practicable:

(1) Minimize bycatch; and

(2) To the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

(b) **General.** This national standard requires Councils to consider the bycatch effects of existing and planned conservation and management measures. Bycatch can, in ~~two~~ three ways, impede efforts to protect marine ecosystems and achieve sustainable fisheries and the full benefits they can provide to the Nation. First, bycatch can increase substantially the uncertainty concerning total fishing-related mortality, which makes it more difficult to assess the status of stocks, to set the appropriate OY and define overfishing levels, and to ensure that OYs are attained and overfishing levels are not exceeded. Second, bycatch **can cause adverse impacts to fish stocks and to fishing communities that target those stocks, and** may also preclude other more productive uses of fishery resources **in other ways.** Third, **bycatch of non-target species, including ecosystem component species and habitat-forming organisms, structures, and substrata, can impact an ecosystem's productivity in whole or in part, which can adversely impact the productivity of the fishery in which the bycatch is occurring or of other fisheries.**

(c) **Definition—Bycatch.** The term “bycatch” means fish that are harvested in a fishery, but that are not sold or kept for personal use.

(1) **Inclusions.** Bycatch includes the discard of whole fish at sea or elsewhere, including economic discards and regulatory discards, and fishing mortality due to an encounter with fishing gear that does not result in capture of fish (i.e., unobserved fishing mortality).

(2) **Exclusions.** Bycatch excludes the following:

(i) Fish that legally are retained in a fishery and kept for personal, tribal, or cultural use, or that enter commerce through sale, barter, or trade.

(ii) Fish released alive under a recreational catch-and-release fishery management program **that are reasonably expected to survive any handling or injury associated with capture.** A catch-and-release fishery management program is one in which the retention of a particular species is prohibited. In such a program, **the proportion of those fish released alive that are reasonably expected to survive based on the best scientific information available on discard mortality** would not be considered bycatch.

(iii) Fish harvested in a commercial fishery managed by the Secretary under Magnuson-Stevens Act sec. 304(g) or the Atlantic Tunas Convention Act of 1975 ([16 U.S.C. 971d](#)) or highly migratory species harvested in a commercial fishery managed by a

Council under the Magnuson-Stevens Act or the Western and Central Pacific Fisheries Convention Implementation Act, that are not regulatory discards and that are tagged and released alive under a scientific tagging and release program established by the Secretary.

(d) ***Minimizing bycatch and bycatch mortality.*** The priority under this standard is first to avoid catching bycatch species where practicable. Fish that are bycatch and cannot be avoided must, to the extent practicable, be returned to the sea alive. Any proposed conservation and management measure that does not give priority to avoiding the capture of bycatch species must be supported by appropriate analyses. In their evaluation, the Councils must consider the net benefits to the Nation, which include, but are not limited to: Negative impacts on affected stocks; incomes accruing to participants in directed fisheries in both the short and long term; incomes accruing to participants in fisheries that target the bycatch species; environmental consequences; non-market values of bycatch species, which include non-consumptive uses of bycatch species and existence values, as well as recreational values; and impacts on other marine organisms. To evaluate conservation and management measures relative to this and other national standards, as well as to evaluate total fishing mortality, Councils must—

(1) ***Promote development of a database on bycatch and bycatch mortality in the fishery to the extent practicable.*** A review and, where necessary, improvement of data collection methods, data sources, and applications of data must be initiated for each fishery to determine the amount, type, disposition, and other characteristics of bycatch and bycatch mortality in each fishery for purposes of this standard and of section 303(a)(11) and (12) of the Magnuson-Stevens Act. Bycatch should be categorized to focus on management responses necessary to minimize bycatch and bycatch mortality to the extent practicable. When appropriate, management measures, such as at-sea monitoring programs, should be developed to meet these information needs.

(2) ***For each management measure, assess the effects on the amount and type of bycatch and bycatch mortality in the fishery.*** Most conservation and management measures can affect the amounts of bycatch or bycatch mortality in a fishery, as well as the extent to which further reductions in bycatch are practicable. In analyzing measures, including the status quo, Councils should assess the impacts of minimizing bycatch and bycatch mortality, as well as consistency of the selected measure with other national standards and applicable laws. The benefits of minimizing bycatch to the extent practicable should be identified and an assessment of the impact of the selected measure on bycatch and bycatch mortality provided. Due to limitations on the information available, fishery managers may not be able to generate precise estimates of bycatch and bycatch mortality or other effects for each alternative. In the absence of quantitative estimates of the impacts of each alternative, Councils may use qualitative measures. Information on the amount and type of bycatch should be summarized in the SAFE reports.

(3) *Select measures that, to the extent practicable, will minimize bycatch and bycatch mortality.*

(i) A determination of whether a conservation and management measure minimizes bycatch or bycatch mortality to the extent practicable, consistent with other national standards and maximization of net benefits to the Nation, should consider the following factors:

(A) Population effects for the bycatch species.

(B) Ecological effects due to changes in the bycatch of that species (effects on other species in the ecosystem).

(C) Changes in the bycatch of- other species of fish and the resulting population and ecosystem effects.

(D) Effects on marine mammals and birds.

(E) Changes in fishing, processing, disposal, and marketing costs.

(F) Changes in fishing practices and behavior of fishermen.

(G) Changes in research, administration, and enforcement costs and management effectiveness.

(H) Changes in the economic, social, or cultural value of fishing activities and nonconsumptive uses of fishery resources.

(I) Changes in the distribution of benefits and costs.

(J) Social effects.

(ii) The Councils should adhere to the precautionary approach found in the Food and Agriculture Organization of the United Nations (FAO) Code of Conduct for Responsible Fisheries (Article 6.5), which is available from the Director, Publications Division, FAO, Viale delle Terme di Caracalla, 00100 Rome, Italy, when faced with uncertainty concerning any of the factors listed in this [paragraph \(d\)\(3\)](#).

(4) *Monitor selected management measures.* Effects of implemented measures should be evaluated routinely. Monitoring systems should be established prior to fishing under the selected management measures. Where applicable, plans should be developed and coordinated with industry and other concerned organizations to identify opportunities for cooperative data collection, coordination of data management for cost efficiency, and avoidance of duplicative effort.

(e) ***Other considerations.*** Other applicable laws, such as the MMPA, the ESA, and the Migratory Bird Treaty Act, require that Councils consider the impact of conservation and management measures on living marine resources other than fish; i.e., marine mammals and birds.